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11 Attorneys for Defendants
DEVICEVM, INC. a Delaware corporation, and
12 BENEDICT CHONG, an individual

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 PHOENIX TECHNOLOGIES, LTD., a
Delaware corporation,

17 Plaintiff,

18 v.

19 DEVICEVM, Inc., a Delaware corporation,
20 and BENEDICT CHONG, an individual,

21 Defendants.

22
23 DEVICEVM, Inc., a Delaware corporation,

24 Counterclaimant,

25 v.

26 PHOENIX TECHNOLOGIES LTD., a
Delaware corporation,

27 Counterclaim-defendant.
28

CASE NO. C 09-04697-CW (EDL)

**JOINT STIPULATION AND ORDER
REGARDING RESPONSE TO SECOND
AMENDED COMPLAINT**

Judge: Hon. Claudia A. Wilken

Trial Date: None Set

STIPULATION

WHEREAS, on October 1, 2009, Defendant/Counterclaimant DeviceVM, Inc. (“DeviceVM”) and Defendant Benedict Chong (“Chong”) (collectively, “Defendants”) removed this action from Santa Clara County Superior Court to this Court in the Northern District of California (Doc. No. 1);

WHEREAS, on January 8, 2010, DeviceVM filed Amended Counterclaims against Plaintiff/Counterclaim-Defendant Phoenix Technologies, Ltd. (“Phoenix”), including a claim for patent infringement (Doc. No. 63);

WHEREAS, on February 4, 2010, Phoenix filed a separate action in the Northern District of California, San Jose Division, for patent infringement against DeviceVM (*see* Case No. 10cv00514);

WHEREAS, on March 1, 2010, Defendants and Phoenix filed a stipulation and proposed order (the “Stipulation”) agreeing that Phoenix would dismiss its separate patent suit against DeviceVM without prejudice and file a Second Amended Complaint in the instant case, which would include Phoenix’s patent claim (Doc. No. 100);

WHEREAS, the Stipulation provided that Phoenix would file the Second Amended Complaint within five days of the Court entering an Order granting the Stipulation, and that Defendants would respond to the Second Amended Complaint by March 19, 2010;

WHEREAS, on March 22, 2010, the Court entered an Order approving the Stipulation as submitted by the parties (Doc. No. 104);

WHEREAS, because the due date for Defendants’ responses to the Second Amended Complaint under the Court’s Order granting the Stipulation has already passed, but Phoenix has not yet filed the Second Amended Complaint, the parties have agreed that Defendants should have five days from the filing of the Second Amended Complaint to file their responses;

1 NOW, THEREFORE, the undersigned parties hereby stipulate and agree, and respectfully
2 request that the Court enter an Order, as follows:

3 1. Defendants' deadline to file an answer or otherwise respond to the Second
4 Amended Complaint shall be within five (5) of the date of its filing with the Court.

5 **IT IS SO STIPULATED.**

6 Dated: March 23, 2010

DAVID ENZMINGER
ERIC J. AMDURSKY
PETER T. SNOW
JILLIAN R. WEADER

O'MELVENY & MYERS LLP

10 By: /s/
11 Peter T. Snow
12 Attorneys for Defendants
DeviceVM, Inc. and Benedict Chong

13 Dated: March 23, 2010

KARINEH KHACHATOURIAN
BRYAN J. SINCLAIR

K&L GATES LLP

16 By: /s/
17 Karineh Khachatourian
18 Attorneys for Plaintiff
Phoenix Technologies Ltd.

19 I, Peter T. Snow, am the ECF user whose ID and password are being used to file this
20 stipulation and [Proposed] Order. In compliance with General Order 45, X B, I hereby attest that
Karineh Khachatourian has concurred in this filing.

21 O'MELVENY & MYERS LLP

22 By: /s/
23 Peter T. Snow

24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

25
26 Dated: 3/26/2010

27 By: 
28 The Honorable Claudia A. Wilken
United States District Judge